18.11.2022
KC(4)

F.M.A.762 of 2005
State of West Bengal and Ors.
-versus-
Sk. Nur Alam and Ors.

Mr. Tapan Kumar Mukherjee,
Mr. Somnath De.....For the appellants.

Mr. Ekramul Bari,
Sk. Imtiazuddin.....For the respondents.

This is an appeal from a judgment and order dated 6th February, 2004 passed by a learned single judge of this court in the exercise of its writ jurisdiction.

The respondents/writ petitioners were former teachers of a madrasa receiving aid from the State government.

The principal question that arose for consideration in the writ application was whether those retired teachers would be allowed to switch over from Contributory Provident Fund cum Gratuity Scheme to the Pension including Family Pension cum Gratuity Scheme, 1981?

There is no dispute whatsoever that the respondents/writ petitioners were eligible to switch over to the latter scheme, and that an application evincing

such desire had been filed by each of them. However, the applications were beyond the time period of 90 days from the date of coming into force of the scheme. Paragraph 5 of the scheme stipulated that the application had to be made within that period.

It is common ground that on the question of delay alone the applications of the respondents/writ petitioners were rejected by the appellant State.

The learned single judge while allowing the writ application by the judgment and order dated 6th February, 2004, *inter alia*, adopted the reasons in the case of Md. Jainuddin Biswas and Ors. –vs- District Inspector of Schools (S.E.), Nadia and Ors., reported in 2002 (3) C.H.N. 284. The learned judge also noted that where in other cases teachers had been given time till March, 1992 to exercise their option why the applications of the respondents/writ petitioners in August, 1990 "should not be treated as filed on time".

By the said judgment and order the respondent District Inspector of Schools was directed to allow the respondents/writ petitioners to change their option from Contributory Provident Fund cum Gratuity Scheme to the Pension including Family Pension cum Gratuity Scheme within four weeks from the date of communication of the order. The impugned memorandum dated 8th May, 2002 was set aside.

A similar issue arising from conflicting orders of the division bench were heard by a Special Bench of this court in District Inspector of Schools (S.E.), Kolkata and Anr. –vs- Abhijit Baidya and Ors., reported in 2013 SCC On Line Cal. 13189 : (2013) 3 C.H.N. 711. The special bench took a liberal view of the delayed applications and ruled on 16th July, 2013 as follows:

> "We direct the State Government to give opportunity to all the petitioners and other employees similarly situated to submit option to switch over to Pension-cum-Gratuity by issuing public notice in at least four newspapers having wide circulation in this State. Three months' time period be given to them to exercise option and let the amount be specified to each and every employee who elects to switch over to Pension-cum-Gratuity to deposit the amount of employer's share of contribution with interest and additional interest which is required to be refunded to the Government within the period specified.
>
> If an employee exercises option, he shall be entitled to Pension-cum-Gratuity in accordance with law with effect from the date refund is made.
>
> Let such exercise be completed within a period of six months from today.
>
> The appeals filed by the State Government are hereby dismissed.
>
> The writ petitions are allowed to the aforesaid extent."

Therefore, the impugned judgment and order has been substantially affirmed by the Special Bench.

Mr. Bari, learned advocate for the respondents/ writ petitioners submits that the State had accepted the verdict of the Special Bench and had acted in accordance with it.

Still Mr. Mukherjee, learned counsel appearing for the State prays for time to take instructions in the

matter. We are of the view that there is no scope of taking further instructions.

In that view of the matter we direct the Principal Secretary, Department of School Education, Government of West Bengal to examine whether there is any court order contrary to or in conflict with the impugned judgment and order of the Special Bench preventing its compliance.

If there is none he shall forthwith, within eight weeks of communication of this order, carry out/implement the impugned judgment and order dated 6th February, 2004 so that the respondents/writ petitioners start receiving pension or family pension, as the case may be, within that period, subject to their complying with all formalities under the scheme.

For abundant clarity we observe that the applications of the respondents/writ petitioners to switch from Contributory Provident Fund cum Gratuity Scheme to the Pension including Family Pension cum Gratuity Scheme filed beyond time shall be deemed to have been accepted after condonation of delay. In case the Principal Secretary finds any order which is contrary or conflicting with the above orders, preventing compliance with the order he shall record the same in a decision and circulate the same to the parties to enable them to take steps in accordance with law. The Principal Secretary, while making a decision with regard

to pension/family pension payable to each of the respondents/writ petitioners shall also take a decision on applicable interest on the same on delayed payment of the amount.

The impugned judgment and order is affirmed, to the above extent.

The appeal (F.M.A. 762 of 2005) is disposed of.

(I.P. MUKERJI, J.)

(BISWAROOP CHOWDHURY, J.)